

THIS IS THE OFFICIAL PUBLICATION OF THE 1972 CONSTITUTION  
PROPOSED BY THE 1971-1972 MONTANA CONSTITUTIONAL CONVENTION  
AS ADOPTED ON MARCH 22, 1972

ITS PUBLICATION IS REQUIRED BY CHAPTER 296, 1971 LAWS OF MONTANA, AS AMENDED,  
AND MADE POSSIBLE BY AN APPROPRIATION BY THE MONTANA LEGISLATURE

Does Not  
Circulate!

*Proposed*  
**1972 CONSTITUTION**  
*for the*  
**STATE of MONTANA**  
**OFFICIAL TEXT WITH EXPLANATION**

*Submitted by the*  
**Montana Constitutional Convention**

**THIS PROPOSED CONSTITUTION WILL BE  
SUBMITTED TO THE VOTERS OF MONTANA AT A  
SPECIAL ELECTION ON JUNE 6, 1972**



State Law Library of Montana  
Justice Building  
215 North Sanders  
Helena, Montana 59620-3004

**TABLE OF CONTENTS**

	PAGE		PAGE
SAMPLE BALLOT .....	2	ARTICLE IX—ENVIRONMENT AND NATURAL RESOURCES .....	14
HISTORY AND HIGHLIGHTS .....	3	ARTICLE X—EDUCATION AND PUBLIC LANDS .....	15
PROPOSED CONSTITUTION OF 1972 WITH COMMENTS .....	5	ARTICLE XI—LOCAL GOVERNMENT .....	16
PREAMBLE .....	5	ARTICLE XII—DEPARTMENTS AND INSTITUTIONS .....	16
ARTICLE I—COMPACT WITH THE UNITED STATES .....	5	ARTICLE XIII—GENERAL PROVISIONS .....	17
ARTICLE II—DECLARATION OF RIGHTS .....	6	ARTICLE XIV—CONSTITUTIONAL REVISION .....	17
ARTICLE III—GENERAL GOVERNMENT .....	8	TRANSITION SCHEDULE .....	18
ARTICLE IV—SUFFRAGE AND ELECTIONS .....	8	ADOPTION SCHEDULE .....	19
ARTICLE V—THE LEGISLATURE .....	9	DELETIONS .....	21
ARTICLE VI—THE EXECUTIVE .....	10	DELEGATES AND OFFICERS OF THE CONSTITUTIONAL CONVENTION .....	22
ARTICLE VII—THE JUDICIARY .....	12		
ARTICLE VIII—REVENUE AND FINANCE .....	13		

## EXPLANATION OF THE BALLOT

THIS BALLOT HAS FOUR SECTIONS. IN THE FIRST SECTION THE VOTER WILL HAVE THE OPPORTUNITY TO VOTE "FOR" OR "AGAINST" THE PROPOSED 1972 CONSTITUTION.

THEREAFTER FOLLOW THREE SEPARATELY SUBMITTED CONSTITUTIONAL PROPOSITIONS. THE VOTER MAY SELECT EITHER ALTERNATIVE ON PROPOSITION NO. 2. THE VOTER MAY VOTE FOR OR AGAINST EACH OF THE THIRD AND FOURTH PROPOSITIONS.

THE THREE ALTERNATE ISSUES DO NOT AFFECT THE PRESENT CONSTITUTION. IF ADOPTED BY A MAJORITY OF THOSE VOTING AT THE ELECTION THEY WILL BECOME EFFECTIVE ONLY IF THE PROPOSED CONSTITUTION IS ADOPTED.

THE VOTER SHOULD VOTE ON ALL FOUR QUESTIONS REGARDLESS OF WHETHER HE VOTES FOR OR AGAINST THE PROPOSED CONSTITUTION.

## SAMPLE BALLOT

### OFFICIAL BALLOT

(Instructions to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed Constitution and the separate propositions is available for inspection at your polling place. If the proposed Constitution fails to receive a majority of the votes cast, alternate issues also fail.)

### PLEASE VOTE ON ALL FOUR ISSUES

1.

(Vote for One)

- ☐ FOR the proposed Constitution.
- ☐ AGAINST the proposed Constitution.

THE PROPOSED CONSTITUTION WILL INCLUDE A BICAMERAL (2 Houses) LEGISLATURE UNLESS A MAJORITY OF THOSE VOTING IN THIS ELECTION VOTE FOR A UNICAMERAL (1 House) LEGISLATURE IN ISSUE 2.

2.

(Vote for One)

- ☐ 2A. FOR a unicameral (1 house) legislature.
- ☐ 2B. FOR a bicameral (2 houses) legislature.

3.

(Vote for One)

- ☐ 3A. FOR allowing the people or the legislature to authorize gambling.
- ☐ 3B. AGAINST allowing the people or the legislature to authorize gambling.

4.

(Vote for One)

- ☐ 4A. FOR the death penalty.
- ☐ 4B. AGAINST the death penalty.

## ARTICLE II

# DECLARATION OF RIGHTS

**Section 1. POPULAR SOVEREIGNTY**

All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

\* \* \* \*

Identical to 1889 constitution. Expresses the philosophy that government is founded on the will of the people and is for their good.

**Section 2. SELF-GOVERNMENT**

The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

\* \* \* \*

No change except in grammar. Gives Montanans the right to govern themselves and to determine their form of government.

**Section 3. INALIENABLE RIGHTS**

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

\* \* \* \*

Revises 1889 constitution by adding three rights, relating to environment, basic necessities, and health. The last sentence is also new and provides that in accepting rights people have obligations.

**Section 4. INDIVIDUAL DIGNITY**

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

\* \* \* \*

New provision prohibiting public and private discrimination in civil and political rights.

**Section 5. FREEDOM OF RELIGION**

The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

\* \* \* \*

Revises 1889 constitution by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

**Section 6. FREEDOM OF ASSEMBLY**

The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

\* \* \* \*

No change except in grammar. Retains basic rights to assemble and to petition or protest for redress of grievances.

**Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS**

No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

\* \* \* \*

Revises 1889 constitution by enlarging a citizen's freedom to express himself and allowing the truth to be given in evidence in slander as well as libel cases.

**Section 8. RIGHT OF PARTICIPATION**

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

\* \* \* \*

New provision creating a right of the people to participate in the decision making process of state and local government.

**Section 9. RIGHT TO KNOW**

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

\* \* \* \*

New provision that government documents and operations be open to public scrutiny except when the right to know is outweighed by the right to individual privacy.

**Section 10. RIGHT OF PRIVACY**

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

\* \* \* \*

New provision prohibiting any invasion of privacy unless the good of the state makes it necessary.

**Section 11. SEARCHES AND SEIZURES**

The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

\* \* \* \*

Identical to 1889 constitution.

**Section 12. RIGHT TO BEAR ARMS**

The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

\* \* \* \*

Identical to 1889 constitution.

**Section 13. RIGHT OF SUFFRAGE**

All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

\* \* \* \*

Identical to 1889 constitution.

**Section 14. ADULT RIGHTS**

A person 18 years of age or older is an adult for all purposes.

\* \* \* \*

New provision. Self explanatory.

**Section 15. RIGHTS OF PERSONS NOT ADULTS**

The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

\* \* \* \*

New provision giving children all of the rights that adults have unless a law meant to protect children prohibits their enjoyment of the right.

**Section 16. THE ADMINISTRATION OF JUSTICE**

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

\* \* \* \*

Adds to 1889 constitution by specifically granting to a person injured in employment the right to sue a third party causing the injury, except his employer or fellow employee when his employer provides coverage under workmen's compensation laws.

**Section 17. DUE PROCESS OF LAW**

No person shall be deprived of life, liberty, or property without due process of law.

\* \* \* \*

Identical to 1889 constitution.

**Section 18. STATE SUBJECT TO SUIT**

The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

\* \* \* \*

New provision abolishing the doctrine of sovereign immunity ("the King can do no wrong") and allowing any person to sue the state and local governments for injuries caused by officials and employees thereof.

**Section 19. HABEAS CORPUS**

The privilege of the writ of habeas corpus shall never be suspended.

\* \* \* \*

Revises 1889 constitution which allowed the writ of habeas corpus to be suspended in case of rebellion or invasion. Revision provides that the writ (the right to test the lawfulness of a person's being detained) may never be suspended.

#### Section 20. INITIATION OF PROCEEDINGS

(1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Retains method in 1889 constitution of starting criminal actions. Increases grand jury from seven to eleven persons.

#### Section 21. BAIL

All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Identical to 1889 constitution. Guarantees that all persons are bailable except in case of certain offenses punishable by death.

#### Section 22. EXCESSIVE SANCTIONS

Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Identical to 1889 constitution.

#### Section 23. DETENTION

No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Deleted provision in 1889 constitution that depositions may be used in a trial if the witness who gave it is dead or out of state. Retained language is identical to 1889 constitution.

#### Section 24. RIGHTS OF THE ACCUSED

In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Identical to 1889 constitution. Establishes fundamental procedural rights of a person accused of crime.

#### Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Revises 1889 constitution by protecting a person from being tried for the same crime by both this state and the United States or another state.

#### Section 26. TRIAL BY JURY

The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Revises 1889 constitution by permitting a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases and by requiring all jurors (rather than 2/3) agree before a defendant may be convicted of a misdemeanor.

#### Section 27. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Identical to 1889 constitution. Safeguards the right of a person in debt to be free from imprisonment.

#### Section 28. RIGHTS OF THE CONVICTED

Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Revises 1889 constitution by deleting reference to capital punishment and providing that rights a person loses when convicted of a crime are automatically restored when he has served his sentence.

#### Section 29. EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Retains provisions in 1889 constitution on eminent domain and expands its protection by guaranteeing that a property owner who goes to court and is awarded more money than offered for his property being condemned will be reimbursed for the necessary expenses of the lawsuit (such as appraiser and attorneys fees).

#### Section 30. TREASON AND DESCENT OF ESTATES

Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

No change except in grammar.

#### Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES

No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Identical to 1889 constitution.

#### Section 32. CIVILIAN CONTROL OF THE MILITARY

The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Identical to 1889 constitution.

#### Section 33. IMPORTATION OF ARMED PERSONS

No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Identical to 1889 constitution.

#### Section 34. UNENUMERATED RIGHTS

The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Identical to 1889 constitution.

#### Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS

The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

New provision allowing legislature to give servicemen, servicewomen, and veterans special treatment in the law.